

RESPONSE AMENDMENT UNDER 37 C.F.R. § 1.116
U.S. Application No.: 10/666,130
Attorney Docket No.: Q77163

REMARKS

Claims 1-15 are all the claims pending in the application. By this Amendment, Applicant amends claim 1 to include the features of the allowable claim 6 and rewrites claim 15 into its independent form. Claim 8 is amended for improved conformity with the U.S. patent practice.

I. Summary of the Office Action

Claim 8 is rejected under 35 U.S.C. § 101. Claims 1-3, 7-10, 12, and 13¹ are rejected under 35 U.S.C. § 102(b), and claims 4, 5, 11, and 14 are rejected under 35 U.S.C. § 103(a).

Claims 6 and 15 contain allowable subject matter.

In particular, the status of claim 6 is indicated as rejected but no rejections are provided. Accordingly, Applicant has contacted the Examiner who indicated that claim 6 contains allowable subject matter.

II. Claim Rejection under 35 U.S.C. § 101

Claim 8 is rejected under 35 U.S.C. § 101 as claiming software per se and therefore being non-statutory. Applicant respectfully requests the Examiner to withdraw this rejection in view of the self-explanatory claim amendment being made herein. In addition, Applicant respectfully submits that claim 8 is directed to statutory subject matter at least by virtue of its dependency on claim 1, which contains statutory subject matter.

¹ The Examiner indicated that claim 11 is rejected under 35 U.S.C. § 102. This clearly contradicts reasoning set forth in the rejection of claim 11 under 35 U.S.C. § 103 (*see* page 6 of the Office Action). Furthermore, claim 11 is not addressed in the rejection under 35 U.S.C. § 102. Accordingly, it is Applicant's understanding that claim 11 is rejected only under 35 U.S.C. § 103.

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III. Prior Art Rejections

Claims 1-3 and 7-10, 12, and 13 are rejected under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent 5,410,699 to Bealkowski et al. (hereinafter “Bealkowski”) and claims 4, 5, 11, and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bealkowski in view of U.S. Patent Application US 2002/0087877 to Grawrock (hereinafter “Grawrock”). Applicant respectfully traverses these grounds of rejections in view of the following comments.

Of these rejected claims, only claim 1 is independent. Independent claim 1 has been amended to include the features of the allowable claim 6. Since the prior art of record fails to disclose or suggest at least the decoupling of the booting process and the execution of the recovery, claim 1 is now allowable over the prior art of record. Claims 2-5 and 7-14 are patentable at least by virtue of their dependency on claim 1.

IV. Allowable Subject Matter

Claims 6 and 15 contain allowable subject matter. By this Amendment, claims 6 and 15 are placed in their independent form (claims 1 and 15, respectively). Accordingly, allowance of all claims is respectfully requested.

V. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. **If any points remain in issue, the Examiner is kindly requested to contact the undersigned attorney at the telephone number listed below.**

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The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.


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